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Report of the Joint Inspection Unit on Reform of the Administration of Justice in the United Nations System: Options for Higher Recourse Instances

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Joint Inspection Unit entitled "Reform of the administration of justice in the United Nations system: options for higher recourse instances" (JIU/REP/2002/5).

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ACRONYMS

ACC	Administrative Committee on Coordination
CEB	United Nations System Chief Executives Board for Coordination
ECA	Economic Commission for Africa
FAO	Food and Agricultural Organization of the United Nations
IAEA	International Atomic Energy Agency
ICAO	International Civil Aviation Organization
ICSC	International Civil Service Commission
ILO	International Labour Organization
ILOAT	International Labour Organization Administrative Tribunal
IMO	International Maritime Organization
JAB	Joint Appeals Board
JDC	Joint Disciplinary Committee
UNAT	United Nations Administrative Tribunal
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIDO	United Nations Industrial Development Organization
UNON	United Nations Office at Nairobi
UNOV	United Nations Office at Vienna
WFP	World Food Programme
WHO	World Health Organization
WIPO	World Intellectual Property Organization

EXECUTIVE SUMMARY AND OBJECTIVE

OBJECTIVE:

To consider, in the context of the reform of the administration of justice in the United Nations system, the possibility of establishing a higher instance in respect of the binding decisions of the two main international administrative jurisdictions, namely, the International Labour Organization Administrative Tribunal (ILOAT) and the United Nations Administrative Tribunal (UNAT), in consultation with the organizations of the United Nations system, and bearing in mind the national legal systems of Member States.

During the preparation of their report entitled "Administration of justice at the United Nations" (A/55/57), the Inspectors reviewed various systems of administration of justice in the organizations of the United Nations system. In evaluating the information available, the Inspectors concluded that the issue, particularly as concerns higher instances of recourse against decisions of the lower- and quasi-judicial bodies, demanded further consideration from a global, system-wide perspective. The General Assembly, in its resolution 55/258, Part XI of 14 June 2001, "*[Took] note* of the intention of the Joint Inspection Unit to continue its study of the possible need for higher-level jurisdiction in consultation with all organizations of the United Nations system, bearing in mind the national legal systems of Member States of the United Nations...".

The first major issue identified by the Inspectors during the preparation of both their previous report and the present one was the need to enhance informal conciliation, mediation and negotiation instances prior to the institution of formalized procedures.

The second major issue related to the establishment of a higher recourse instance against the decisions of the administrative tribunals. The Inspectors made no recommendation regarding the United Nations alone but decided to consider, in consultation with all the organizations, whether a higher instance with competence in a limited number of clearly-defined cases should be established over the United Nations system as a whole.

The third major issue concerned proper legal advice and representation for staff who are at a disadvantage in this respect compared with management, which can rely on the support of the legal and administrative services of the various organizations.

The Inspectors have so far avoided looking into substantive law in their examination of the administration of justice. They have instead concentrated on all aspects of procedure, both from a theoretical and a practical viewpoint. In the course of their investigation, however, the Inspectors have identified large substantive and procedural lacunae in law which may allow organizations to evade the worst consequences of improper decisions by their officials.

This report therefore proposes measures designed to ensure that the internal administration of justice in international organizations provides staff members and the administration with recourse options equivalent to those they would find available within the domestic jurisdictions where each civil servant has the right to contest an administrative decision.

CONCLUSIONS AND RECOMMENDATIONS

Independence of the administration of justice in the organizations of the United Nations system

In their previous report on this subject entitled "Administration of Justice at the United Nations" (A/55/57), the Inspectors proposed the establishment at the United Nations of a separate office for the settlement of disputes and the administration of justice comprising the Secretariat of the United Nations Administrative Tribunal (UNAT), the Office of the Ombudsman and the Secretariats of the Joint Appeals Board (JAB) and the Joint Disciplinary Committee (JDC). Furthermore, the Inspectors observed that while the Registry of the International Labour Organization Administrative Tribunal (ILOAT) is independent from the organization's legal and administrative services, UNAT's secretariat is under the aegis of the Office of Legal Affairs.

RECOMMENDATION 1:

Every effort should be made to ensure the independence of all bodies concerned with the administration of justice; whenever appropriate, organizations might wish to consider establishing independent offices grouping all bodies and institutions dealing with the administration of justice, as recommended by the Inspectors for the United Nations.

Reinforcement of informal conciliation, mediation and negotiation functions

Although there exist in several organizations internal advisory bodies, such as the joint appeals boards, which mediate between the parties at any stage of the proceedings, either formally or informally, the Inspectors find that such advisory bodies have not always proved as effective as they could be in preventing litigation. Additionally, ILOAT and UNAT would seem to require more formal and explicit mediation authority that could go some way to relieving congestion at the lower jurisdictional levels. Obviously, this power would be fully discretionary and a decision by the tribunals not to exercise it would not be subject to any appeal.

RECOMMENDATION 2:

(a) **The organizations' capacity for informal conciliation, mediation and negotiation should be strengthened. Every organization that has not yet done so is encouraged to establish an independent, central ombudsman function performed by a senior official appointed by the executive head, in consultation with the staff representatives, for a single, non-renewable five-year term. This function should be complemented, at every major duty station, by a person or a panel responsible on a part-time basis for informal conciliation, mediation and negotiation functions under the overall guidance and supervision of the ombudsman.**

(b) **Following the example of certain judicial instances in the Member States, ILOAT and UNAT should be enabled to mediate between parties. This power should be expressly attributed to the tribunals so that, whenever deemed appropriate, they may resort to conciliation to resolve disputes, particularly those where no major legal issues are involved.**

Harmonization of the work and procedures of ILOAT and UNAT, leading to a merger of the two tribunals

The Inspectors find that the statutory provisions and work procedures of ILOAT and UNAT differ in a number of important respects, especially regarding the selection of the members of the two tribunals, their competencies, jurisdictions and case laws. The harmonization of these discrepant elements would pave the way to an eventual smooth merger of the two tribunals.

RECOMMENDATION 3:

In considering the desirability of eventually merging ILOAT and UNAT, the competent legislative organs of the United Nations and the ILO may wish to require the harmonization of the statutes and working procedures of the two tribunals in question, with special emphasis on

the procedures for selecting their members, their competencies and jurisdictions as well as case laws; a detailed timetable for such a merger should be developed by the two tribunals in consultation with their participating organizations as appropriate.

Joint appeals boards, joint disciplinary committees and similar bodies

The Inspectors believe that the important role played by internal advisory bodies such as joint appeals boards, joint disciplinary committees and others in assisting the executive heads of the organizations in resolving staff-management disputes, notably through the determination of facts, the identification of major issues and the formulation of recommendations, should be more widely recognized. To that end, the executive heads of the organizations should subscribe to the following measures:

RECOMMENDATION 4:

(a) **Adopt as a general operating principle the practice of accepting the unanimous recommendations of these bodies, without prejudice to the authority of the executive heads in the discharge of their administrative responsibilities.**

(b) **Publish annual reports containing summarized information on the number and nature of the cases heard before joint appeals boards, joint disciplinary committees and similar advisory bodies, as well as general statistics on the disposition of such cases; the confidentiality of their proceedings should be preserved.**

(c) **Give appropriate consideration to the holding of oral hearings before all appellate bodies when these hearings could contribute to the settlement of disputes and expedite the disposition of cases.**

Options for a higher recourse instance

The Inspectors believe that the elimination of the recourse against UNAT decisions before the International Court of Justice (ICJ) has had the perhaps unintended effect of suppressing the only existing remedy against any possible flaws in the decisions of the Tribunal. Indeed, the Court played an important role for a number of years in matters concerning international organizations and their staff. Applications for review of UNAT judgements by the Court were submitted to a special body known as the Committee to Review the Judgements of the Administrative Tribunal. This Committee was abolished in 1995 but the motives which justified its establishment are still valid and topical.

RECOMMENDATION 5:

The General Assembly may wish to request the Sixth Committee to study the desirability of establishing an ad hoc panel that would be responsible for reviewing the judgements of the existing two tribunals or a future single tribunal (see recommendation 3 above); the panel in question could include the following features:

(a) **It should be composed of a Chairperson designated by the President of the International Court of Justice and two members designated one each by the Presidents of ILOAT and UNAT/legislative bodies of the International Labour Organization and the United Nations. The persons proposed to serve on this ad hoc panel should be eminent jurists, internationally recognized. Their term of office shall not exceed that of the members of the tribunals. A screening procedure should be established to avoid that this panel becomes inundated with unfounded appeals.**

(b) **Applications for review of the judgements of the tribunals may be founded on the following criteria: first, that the tribunal has exceeded its jurisdiction or competence; second, that the tribunal has failed to exercise jurisdiction vested in it; third, that the tribunal has erred on a question of law relating to the provisions of the United Nations Charter; fourth, that the tribunal has committed a fundamental error in procedure which occasioned a failure of justice; and fifth, that the tribunal has deviated substantially from its jurisprudence.**

***(c)* The determinations and conclusions of the ad hoc panel shall be binding on the executive heads of the organizations and on the tribunals. The ad hoc panel shall not reopen the procedure but only review, as appropriate, a judgement, so that the tribunal that has issued it shall confirm or revise it in the light of the ad hoc panel's determinations and conclusions.**

Legal advice and representation for staff members

The Inspectors propose that the organizations should ensure the widest possible access of staff to the administration of justice and guarantee equality between the parties in adversary procedures before internal advisory and judicial bodies.

RECOMMENDATION 6:

The executive heads of the organizations should ensure collaboration with the staff associations in the development of comprehensive legal insurance schemes covering legal advice and representation for staff in these procedures, on the understanding that the organizations shall contribute towards these schemes only until such time as they are self-financing.

INTRODUCTION

1. Throughout their investigation, the Inspectors have observed that, despite their specific characteristics, all the United Nations international administrations face similar problems when it comes to disputes in their relations with staff.

2. All the international organizations acknowledge - it is one point they have in common - that administrative disputes involving their staff must be handled legally and transparently by improving - their shared objective - current rules and procedures to arrive at a situation that all consider satisfactory.

3. This shared objective is directly inspired by a dual concern: first, to alleviate the bafflement that international chiefs of administration sometimes feel at judgements awarding plaintiffs compensation that, in their view, is over-generous; and second, to ease the frustration of some staff members who believe that their rights have been ignored in other judgements.

4. At all events, and irrespective of the annoyance felt and hopes cherished by the various parties concerned, the Inspectors believe that striving to harmonize, if not actually unify, the rules and procedures governing relations between employers and staff throughout the international administration is a policy much to be recommended. Such an objective, they feel, offers a better blueprint for the international civil service overall and answers to the modern demands of "good governance". This report seeks to address that concern.

5. When a dispute arises between an employer and a staff member in the international organizations, the first step in most United Nations bodies is generally to look for an agreed settlement. The means used to do so, however, vary from one organization to the next. Some – the World Intellectual Property Organization (WIPO), for example - have never yet established a proper legal procedure, restricting themselves to "negotiating" with the claimant insofar as they choose, but being under no obligation to do so. Others - the majority, in fact - clearly favour conciliation and mediation. They have even institutionalized this first phase of seeking an agreed settlement by creating such offices as mediators or ombudsmen.

6. This first stage in dealing with disputes involving the staff should, in the Inspectors' view, be approached with the greatest possible attention and care. Potentially valuable though it may be, the disputing parties generally pay this first part of the proceedings very little heed in their haste to get to the judicial stage proper although, if tackled correctly, the search for an agreed solution affords considerable scope for a swift and final settlement to the dispute.

7. The first thing for all the United Nations organizations to do is to institute, along substantially similar lines, judicially defined stages during which agreed settlements are to be sought internally. These first conciliation and mediation stages must not, in future, be regarded by either side as mere administrative formalities to be got quickly out of the way so that a case can be brought before the competent administrative tribunal. Careful thought needs to be given to the way in which the preliminary stage leads on, judicially, to litigation so as to make efforts to find an agreed solution as thorough as possible. Lastly, both sides must approach this initial phase in a positive frame of mind, as if it offered the last possible chance to arrive at a settlement. Far from seeming like a useless formality to be gone through as quickly as possible, conciliation and mediation can then show their worth and render great service, saving time and money and alleviating the burden on the judicial bodies beyond. If this initial phase is made mandatory everywhere, while retaining the virtues of operational flexibility in the interests of a successful outcome, the Inspectors believe it will be regarded as the equivalent of a first level of (non-litigious) "judicial hearing", making the mooted introduction of appeals against the rulings of the administrative tribunals almost superfluous.

8. Given the potential value of this non-litigious phase, appropriate initiatives by all the international organizations considered to make such internal recourse procedures generally available and

harmonize them, while not neglecting the way they tie in with subsequent stages of the proceedings, are much to be recommended.

9. A notable feature of internal recourse procedures is their variety. In some international administrations they do not exist at all, in others they are limited to vague, poorly defined conciliation or mediation, while in others again they take the form of joint appeals boards which have no decision-making authority themselves but can only make recommendations on which the chiefs of administration, sometimes awkwardly for them, must have the final say. These procedures need to be entirely recast.

10. If settled to the satisfaction of all concerned in internal, non-litigious proceedings, a dispute between an international civil servant and his hierarchical superiors would no longer have to be brought before the ILO or United Nations Administrative Tribunals. That would be good not only for the tribunals, which would have a little more latitude to deal with the mass of business before them, but also for the health of the international administrations which is sometimes impaired by a run of unpleasant cases that poison relations between an organization and its staff.

11. Furthermore, it must be remembered that nowhere in the international civil service is there a second level of judicial authority to which a party may appeal against what it regards as an unwarranted decision despite the fact that the international civil service has modelled itself after the national civil services where the possibility of a second appeal is usually recognized. This is all the more regrettable because application to the administrative tribunal is not, as noted above, preceded by institutionalized, thorough attempts to arrive at an agreed settlement. The Inspectors feel that the absence of a second level of judicial authority should be remedied, it being understood that the universal availability of an agreed settlement system would be likely to ease the burden on both levels of authority.

12. The question of appeal against the decisions of the United Nations administrative tribunals has been raised from time to time without receiving a consistent answer. One clear principle must always inform efforts to establish a second level of judicial authority: every effort must be made to avoid creating procedures that are conspicuously lengthy, cumbersome and costly. The Inspectors are mindful of the warnings from the legal advisers in several organizations against appeals that would "create more bureaucratic overload" and that "the cost of setting up an appeal mechanism would be exorbitant considering the limited number of cases it would be required to handle".

13. These points are valid, and the Inspectors are concerned, as always, not to force the international administrations into the rut of sterile routine or the sort of overspending they are forever seeking to combat. They do point out, however, that if the first efforts to arrive at agreed settlements were organized to yield the maximum effect, the burden on both levels of judicial authority would be reduced overall. The higher level, in particular, would serve the cause of justice more by simply being there or by standing as a symbol than by working solidly and at high cost, for it would not have to do so very often. There is thus no reason not to provide for a second level of judicial authority: it could only improve the image of the United Nations because at the moment, unfortunately, the system's standing is not high and the Organization is, rightly or wrongly, regarded as being largely unconcerned with due process and lacking a swift, fair justice system.

14. In any event, the Inspectors' suggestions below stem from careful thought following their investigation and are not intended to destabilize the two administrative tribunals in any way. The Inspectors salute the role played by the tribunals in upholding the independence and security of the international organizations and their staff.

I. INFORMAL INTERNAL RECOURSE PROCEDURES IN THE ORGANIZATIONS OF THE UNITED NATIONS SYSTEM

15. Modern management cultures emphasize the development of negotiation skills in staff at all levels. The use of informal means, such as conciliation, mediation and negotiation, to settle staff-management disputes, is also greatly encouraged. Their obvious advantages are that they prevent the formalization of cases before internal appeal and higher instances, which tend to be lengthy, costly and often unsatisfactory, as they may deepen the differences between staff and management instead of eliminating them. In addition, informal procedures do not aim at determining who is right and who is wrong; in fact, they are more effective when no blame is apportioned. Numerous problems, many of which result from interpersonal relations, may be solved without resort to litigation.

16. The organizations of the United Nations system recognise almost universally such advantages. Most have established full-time or part-time positions or bodies to resolve conflicts before they become formalized. It would be desirable for all organizations to move towards resolving conflicts through mediation, conciliation and negotiation, reinforcing informal procedures and reducing substantially the number of disputes before appeals bodies. Informal procedures should be available throughout the lifetime of a pending dispute, even at the internal appeal and tribunal stages.

17. Informal procedures can only be effective, however, if the individuals or bodies charged with the informal settlement of disputes enjoy the full confidence of the administration and of the staff, and have the necessary powers to move fast and make timely, concrete recommendations. Informal procedures should not consume substantial time or bypass time limits but should resolve conflicts expeditiously. Furthermore, administrators should have the necessary authority to negotiate or reach compromises, including the authority to make disbursements, such as ex gratia or equity payments, with a view to resolving conflicts and avoiding litigation. Rules currently in force should be reviewed to ensure that they allow such disbursements.

18. Mechanisms to resolve disputes informally exist at numerous organizations. At the United Nations Secretariat, for instance, these mechanisms currently consist of the body established in 1977 at the United Nations Headquarters, pursuant to General Assembly resolution 31/26, under the name of Panel to Investigate Allegations of Discriminatory Treatment. Panels were subsequently established at major duty stations. In 1983, they were renamed Panels on Discrimination and other Grievances.

19. Regrettably, when the Inspectors met Panel members at New York during the preparation of their previous report, Panel members made no secret of their discouragement. The Inspectors felt that a more dynamic institution should replace the Panel and accordingly proposed the establishment of a full-time Ombudsman function. Following a proposal to that effect by the Secretary-General, the General Assembly welcomed the Secretary-General's intention in its resolution 55/258 and an Ombudsman has recently been appointed at the Assistant Secretary-General level.

20. The United Nations Children's Fund (UNICEF) has also established an informal grievance procedure and ombudsman system designed to foster a harmonious and productive work environment, whose immediate objective is conciliation between staff members, between staff members and supervisors, and staff members and the administration by seeking mutually acceptable solutions through informal means. Ombudsmen are selected for a two-year period either by consensus or election.

21. The United Nations Development Fund (UNDP) has an Ombudsman Panel, which also serves the United Nations Population Fund (UNFPA). The Panel members, one of whom is designated as Coordinator, are normally appointed for a period of two years. New members are proposed by the Coordinator to the staff representatives, who then

recommend them for appointment in consultation with the UNDP and UNFPA administrations. Panel members deal with a wide variety of issues, including personnel matters, personality conflicts, general grievances and sexual and other harassment. They do not intervene in cases handled under other arrangements, such as "collective" cases, which are handled by the staff representatives, performance appraisal report rebuttals or promotion issues.

22. To resolve grievances outside of formal litigation the Food and Agriculture Organization of the United Nations (FAO) offers its staff an optional conciliation mechanism which, however, falls short of a true mediation procedure. FAO has also established procedures to deal with allegations of sexual harassment. The World Food Programme (WFP) has no informal methods of settling conflicts but has put in place procedures to deal with cases of sexual harassment, abuse of authority and the like. At a meeting with the Inspectors, the FAO/WFP Staff Representatives stated that there is no obligation for FAO/WFP managers to enter into conciliation procedures. They also underlined that managers are seldom held accountable for their actions. In the absence of true conflict resolution procedures, particularly for field staff, staff are forced to appeal before the organization's internal appellate bodies and later before the ILO Administrative Tribunal.

23. A wide range of mediation and conciliation mechanisms exist at the International Atomic Energy Agency (IAEA). At the first stage, personnel officers try to resolve conflicts between staff and supervisors. Staff counsellors may handle personal problems - family, financial, substance abuse and others. Staff members who need assistance in overcoming difficulties resulting from residence in Vienna may resort to SOS Colleagues, a volunteer group of staff. Conflicts that might lead to appeals may be referred to any member of a team of five or six mediators. The system is very efficient in solving problems informally and reduces considerably the number of formal appeals. In addition, mediation and conciliation continue to feature in the appeals process.

24. There is at present no mechanism at the International Maritime Organization (IMO) along the lines of a mediator or an ombudsman. Staff-elected mediators existed over a decade ago, but apparently they were under-used and ineffective. The size of the organization, consisting of approximately 300 staff altogether, facilitates direct acquaintance with the staff and first-hand knowledge of individual and collective problems and difficulties. On the other hand, IMO staff representatives listed the lack of a conciliation and mediation mechanism as a hurdle in the relationship between administration and staff.

25. Following the Inspectors' discussions with IMO's administrative and legal divisions, a proposal has emerged to replace the joint appeals machinery, which is considered to be largely ineffective, with a full-time ombudsman or mediator enjoying the confidence of both the Secretary-General and the Staff. The mediator would examine a dispute and make recommendations to the Secretary-General, who would retain the option of rejecting it. In this case, however, the appellant would have the right to go to UNAT. The Inspectors consider this as a valid option for a small-size organization such as IMO, which would eschew long procedural delays before the internal appeals bodies.

26. Several retired staff members of the United Nations Educational, Scientific and Cultural Organization (UNESCO) act as mediators with the main function of trying to informally resolve conflicts involving staff and managers. Unfortunately, although the mediators have had free access to the Directors-General over the years, they are unable to carry out efficaciously their functions without constant recourse to the Directors-General.

27. At meetings with the Inspectors, the President of the UNESCO *Conseil d'Appel* stated his belief that procedures involving administration and staff should not be exclusively adversary and that informal mediation and conciliation would be very useful in the settlement of disputes. Nevertheless, an Ombudsman could not replace the *Conseil*, since the Ombudsman could not hand down judicial opinions but only try to resolve a dispute by informal means.

28. The United Nations Industrial Development Organization (UNIDO) has five mediators chosen jointly by administration and staff. Their purpose is to avoid litigation at an early stage. The mediators may include both Professional and General Service staff.

29. Since it was created in the early 1980s, the Ombudsman function at the World Health Organization (WHO) has evolved from a half-time job into a full-time one. The staff choose the Ombudsman from a list compiled by the Director-General. In addition, WHO has formulated in final form a policy addressing sexual and other forms of harassment.

30. Perhaps the most advanced system for settlement of disputes is the "Collective Agreement on a Procedure for the Resolution of Grievances" entered into by the International Labour Office and the ILO Staff Union on 13 September 2000. Among the most important features of this Agreement is the recognition by both parties – ILO and the Union – that "the laws of natural justice require that nobody should adjudicate his/her own case and that the parties should have the right to be heard." The Parties also recognise that "a grievance should be resolved as quickly as possible and at the level closest to where it arose," as well as the need to develop and implement strategies aimed at preventing grievances. Furthermore, "particular emphasis should be placed on taking measures to eliminate all forms of harassment." The ILO moreover recognises "the role of the Staff Union to represent any staff member, at his/her request, in relation to matters dealt with under this Agreement."

31. The Agreement provides for the appointment of an ombudsman. The Ombudsperson is to be a suitably qualified person from outside the ILO, appointed with the joint agreement of the ILO and the Union. This function is competent to deal with all grievances, defined as disagreement on any issue arising out of a staff member's work or employment. The only exceptions are matters covered by other procedures, such as disciplinary cases, job classification, selection or performance appraisal. The Ombudsperson is assisted by Grievance Resolution Facilitators appointed jointly by the ILO and the Union.

32. At a first stage, staff members may avail themselves of the Resolution by Dialogue Process, which involves meetings between applicable line managers and the staff concerned, with the option of assistance from facilitators or the Ombudsperson, or both. Following the meeting, staff may opt to proceed further before either the Ombudsperson or the Joint Panel. The Ombudsperson has full powers to endeavour to effect a resolution of grievances. Elements in these procedures include a meeting of all parties concerned and a report to be submitted by the Ombudsperson to the line manager. If informal procedures fail to resolve the grievance, staff may resort to the Resolution by Adjudication Process.

33. During mission travel undertaken in the context of other reports, the Inspectors took the opportunity to acquaint themselves with conditions at duty stations other than Headquarters, namely, Nairobi and Addis Ababa.

34. At that time, i.e. prior to the recent appointment of the Ombudsman at Headquarters, both a Panel on Discrimination and an Ombudsman were functioning at the United Nations Office in Nairobi (UNON). During meetings with the UNON Panel members, the Inspectors were told that submitting formal complaints against supervisors is against the culture of the region and that UNON staff, by and large, preferred to compromise. As a result, the functions of the Panel are key in solving many day-to-day disputes.

35. The Panel members felt that it would be valuable for an ombudsman function to be established at Headquarters for the Secretariat as a whole, since this institution would ensure that the same standards are applied everywhere. However, it would be important to ensure that Nairobi standards, which are based on specific cultural considerations, were also respected and taken into account. In the UNON Panel members' view, it would be possible for the Panel and the Ombudsman to work together.

36. It is interesting to note that, in the course of other meetings, the staff representatives also welcomed the establishment of an independent, high-level Ombudsman. In their view, no proper channel is at present available for staff members to express grievances as individuals and there are neither guarantees of protection for staff who submit complaints, nor assurances that they will not later be subject to retaliation.

37. The Panel follows an informal, flexible approach to disputes. As a first step, it refers the complaints received to the administration for comment, prior to intervening between the parties. The main problem is that the procedure is very slow when, ideally, speed is of the essence. Besides, whereas Panel members consider that they have completed their work when they make a recommendation, staff members feel that the process is not completed until there is a reaction to the recommendation.

38. The UNON Ombudsman's main function is to mediate and attempt reconciliation between the parties before a grievance is formalized before the Joint Appeals Board. During their visit to Nairobi, the Inspectors were told that the UNON Ombudsman's office handled approximately 1,000 mediation cases a year.

39. The Ombudsman expressed strong support for the conclusions and recommendations contained in the previous JIU report on the administration of justice, particularly as they referred to the creation of a high-level ombudsman function and the establishment of an independent office for the administration of justice. The five-year period suggested for the Ombudsman's mandate was considered to be quite appropriate. He himself had served in that position for over seven years, a period he considered too long. Obviously, the appointment of a high-level Ombudsman would entail the abolition of the local Ombudsman posts, including his own.

40. Further options for the informal settlement of disputes are available at UNON. In effect, the Joint Appeals Board's Rules of Procedure and Guidelines assign to its Presiding Officer the function of designating conciliating officers chosen from the Board to conduct conciliation proceedings if such proceedings are requested under Staff Rule 111.1 (b). Board members have suggested that, at duty stations where the number of potential cases does not warrant the establishment of both an Ombudsman and a Joint Appeals Board, the possibility should be considered of extending the mandate of the Board and its members, either singly or collectively, to conduct conciliatory procedures of an informal nature, with the legal advice of the Board's Secretary, before formal appeals are filed.

41. In contrast with UNON, the Economic Commission for Africa (ECA) has few institutions set up to resolve staff-management disputes. Staff may address themselves to a Panel on Grievances, which, however, is not deemed to be particularly effective, or seek the advice of a pro bono publico Resident Counsellor, a retired staff member, who advises some of the staff. It is mostly left to the ECA administration to try to resolve staff-management conflicts when they come to its attention. ECA has recently designated a Staff Counsellor who is charged with containing problems at an early stage, bringing together persons who are unable to see beyond their own interests, making them grasp the broader picture and, on that basis, trying to resolve the conflict. If, however, the administration is unable to solve a problem to the staff's satisfaction, the latter may seek the assistance of the Staff Union. The Inspectors were told that, obviously, the administration would prefer that staff brought their problems to it, rather than to the Staff Union, although in practice the Union does not support every staff claim but advises staff when they are not in the right.

II. REFORM OF THE ADMINISTRATION OF JUSTICE: OPTIONS FOR HIGHER RECOURSE INSTANCES

A. BACKGROUND

42. As seen in the previous chapter, the first stage of internal recourse against an administrative decision is usually a procedure through which the head of an organization is asked to reverse a decision taken on behalf of the organization. The second stage is the submission of an appeal before one of the two administrative tribunals in the system: the International Labour Organization Administrative Tribunal (ILOAT) and the United Nations Administrative Tribunal (UNAT). (The lists of organizations which recognize the jurisdiction of the two tribunals appear as Annexes A and B, respectively.)

43. The predecessor of the current tribunals, the Administrative Tribunal of the League of Nations, created in 1927, had no provision for review or appeal. Similarly, the Statute of ILOAT, which succeeded the Administrative Tribunal of the League of Nations in 1946, clearly states in article VI, paragraph 1 that "judgments shall be final and without appeal."

44. However, article XII, paragraph 1 of the annex to the Statute, which applies to international organizations entitled to reconize the jurisdiction of ILOAT, reads:

"In any case in which the Executive Board of an international organization which has made the declaration specified in article II. paragraph 5, of the Statute of the Tribunal challenges a decision of the Tribunal confirming its jurisdiction, or considers that a decision of the Tribunal is vitiated by a fundamental fault in the procedure followed, the question of the validity of the decision given by the Tribunal shall be submitted by the Executive Board concerned, for an advisory opinion, to the International Court of Justice."

45. UNAT, although it was established after ILOAT in 1949, originally had no provision corresponding to article XII of the latter's Statute. In 1955, the International Court of Justice advised the United Nations General Assembly that, in the absence of such a provision, there were no possible grounds for refusing to abide by a UNAT judgement and no method of appealing or reviewing it. The Assembly subsequently added article 11 to the UNAT Statute, based on the ILOAT precedent.

46. At the same time, the Assembly introduced two innovations: firstly, applicants could also initiate the review procedure along with States and executive heads (who in effect are the only entities able to do so under an ILOAT-like procedure since only they have access to the executive boards of the organization); and secondly, the grounds for review were expanded to include two additional ones, namely, failure of the Tribunal to exercise its jurisdiction and error of law relating to the Charter.

47. Finally, since the United Nations had no organ corresponding to the "executive boards" of the specialized agencies, the Assembly assigned competence to request advisory opinions in relation to UNAT judgements to a Committee on Applications for Review of Administrative Tribunal Judgements. This body, as outlined in the previous JIU report (A/55/57), was "composed of the Member States the representatives of which have served on the General Committee of the most recent regular session of the General Assembly."

48. In December 1995, through its resolution 50/54, the General Assembly decided to amend the Statute of the United Nations Administrative Tribunal by deleting article 11, thus suppressing the Committee on Applications for Review, though its motives remain valid today, and removing the only recourse available against possible flaws in the decisions of UNAT.

49. The current situation is thus that in respect of decisions taken by UNAT there is no existing recourse for either organization or staff, and in respect of decisions taken by ILOAT, there is no recourse except in the form of a request by an Executive Board, for an advisory opinion from the International Court of Justice.

50. Starting in 1998, the Legal Advisers of the United Nations system discussed at several meetings the advisability of introducing a second-tier appellate mechanism. At the request of the then Administrative Committee on Coordination (ACC), the Legal Advisers pursued the matter actively and - with the exception of the UNESCO Legal Adviser who argued that the present system excludes nearly all possible remedies against a judgement of a tribunal - reached consensus on a common position at their meeting held in Rome in March 1999.[1] Further details are also given in the previous JIU report (A/55/57).

51. At its thirtieth session, held from 26 October to 19 November 1999, the UNESCO General Conference, informed of the progress made at the inter-agency level regarding the implementation of the foregoing resolution, adopted resolution 30C/84 by which it requested "the Director-General to pursue his efforts to achieve an inter-agency solution for improvement of the administrative tribunal mechanisms within the United Nations common system which takes due account of the decisions adopted by the Administrative Committee on Co-ordination (ACC)."

B. VIEWS OF SELECTED ORGANIZATIONS OF THE UNITED NATIONS SYSTEM

UNESCO

52. Most organizations maintain, at least officially, that the administration of justice in international organizations does not require a second tier, that is to say, a recourse instance against the judgements of the Administrative Tribunals of the United Nations (UNAT) and the International Labour Organization (ILOAT) as indicated in paragraph 36 above. UNESCO, in contrast, has long militated in favour of a reform of the system of administration of justice which would offer staff and administration alike a recourse against the tribunals' judgements. At the above-mentioned Legal Advisers' Meeting, the UNESCO representative declined to join in the consensus. The difficulty with this position of UNESCO, however, is that many see it not so much as responding to a question of principle but as mirroring closely the personal views of its former Director-General. Indeed, on the occasion of the twenty-eighth session of the UNESCO General Conference, in 1998, the former Director-General submitted proposals designed to improve the functioning of ILOAT and broaden the possibilities of appeal. The Executive Board, however, did not support his proposals.

53. Senior UNESCO officials expressed the view that the establishment of a second tier would be, from a purely legal viewpoint, a positive development. Internal procedures in the different organizations did not constitute a fully-fledged first tier and did not meet the universal requirement that appeals should be reviewed by more than one independent authority. Under the relevant rules, internal appellate boards were not jurisdictional organs, but advisory. Since their recommendations were not binding, the prerogative of the executive head to reject their advice should be preserved. On the other hand, every effort should be made to enforce their recommendations whenever possible.

54. The UNESCO officials believed that a second tier should exist to deal only with limited recourse instances which should be clearly enumerated and defined and which would not require reopening of the entire case. An additional advantage of a higher recourse instance would be that its existence could stimulate the lower tribunals to make an extra effort, in the knowledge that their decisions may be subject to scrutiny and that they are not guaranteed both infallibility and impunity.

55. Harmonization of the work of the tribunals and coherence in their decisions should be sought. Both administrations and staff should know what to expect from the tribunals and to predict, to a certain extent, the outcome of legal action before these bodies. At present, far too many decisions of ILOAT were riddled with inconsistencies.

The President of the UNESCO *Conseil* favoured the merging of the two tribunals which could, for

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[1] Legal Advisers of the United Nations System, *Note on the advisability of introducing a second-tier appellate mechanism to enhance the administration of justice in the United Nations system*, Rome, 1999.

example, be renamed the Joint Judicial Tribunal, to emphasize that its judgements were binding decisions and not advisory opinions. In the meantime, the judgements of both tribunals should be widely disseminated and a repertory and commentary of their jurisprudence compiled.

IMO

56. IMO officials were of the opinion that the merger of ILOAT and UNAT was an option deserving of further consideration. One problem to be envisaged, however, stemmed from the different and sometimes conflicting jurisprudence of the two tribunals: parties before the merged tribunal would not know which case law to invoke. In any event, IMO believed that a useful recommendation at this stage could consist in the publication of a comprehensive thematic repertory and analysis of UNAT jurisprudence. The IMO administration's position regarding a second tier was that *(a)* oral hearings should be held by UNAT at which the representatives of the IMO administration may be heard on important points of law and fact; and *(b)* it would appear unnecessary to create a separate judicial organ to hear administrative appeals when the International Court of Justice exists.

57. If a second-tier recourse instance were created, appellants should have access to this superior jurisdiction only in cases of serious error of law or fact or constitutional issues. Efforts would have to be made to ensure that recourse before this higher jurisdiction was limited to the most meritorious cases, not only for strictly legal reasons but also because of the elevated cost of procedures before high judicial organs such as the International Court of Justice.

58. Past experiences of IMO have, from the point of view of its administration, been somewhat negative. In the early 1990s, IMO tried to bring a case before the Court. The case, which IMO had lost before UNAT, involved a comparatively high proportion of General Service staff. For some time, IMO had recruited General Service staff on an international basis for certain posts in the language services requiring specific language skills. This policy was later changed and staff were recruited locally. Some staff affected by this policy-change submitted a recourse that eventually reached UNAT. One contention hinged on the omission of an indication in the vacancy announcement that the posts were to be filled by local recruitment only. The Tribunal's decision was that, since there was no indication of this condition in the vacancy announcement, the incumbents of these posts were entitled to international status. This judgement cost IMO a fortune in retroactive benefits, including payment of education grant, home leave, and other benefits.

59. IMO submitted an application to the Committee on Applications for the Review of Judgements of the Administrative Tribunal. The Committee turned down IMO's request to present its case before the Court. Soon afterwards, IMO learned that the procedure before the Court had been discontinued and the Statute of the Administrative Tribunal amended to reflect this fact.

UNIDO

60. UNIDO senior officials considered the administration of justice at the organizations of the United Nations system as being of primary importance. Some emphasized that United Nations managers tended to hide behind the rules. The United Nations, however, had to set an example in all fields and the administration of justice was a matter directly linked to its image. For that reason they supported the introduction of a higher instance of recourse against the decisions of the tribunals, or second tier. This measure would bring the United Nations system in line with most domestic jurisdictions.

61. The amount of compensation to be given to successful appellants should be made to depend on the type of contract they held. For an appellant holding a fixed-term contract, a few months of salary would constitute sufficient compensation, while for an appellant with a permanent contract a higher sum would be in order. The sum granted to appellants recently by the United Nations Administrative Tribunal (UNAT) - equivalent to 18 months of their salary - appeared to be fair.

62. On the other hand, a few senior officials of UNIDO and the United Nations Office at Vienna (UNOV) found it hard to support the proposal for the introduction of a higher instance of recourse against the decisions of the tribunals, or second tier, the reason being that this would add another bureaucratic layer to the procedure. Furthermore, the administration of justice was costly and adding further instances would certainly increase its cost without necessarily improving it.

63. Other UNIDO senior officials felt that, if the joint appeals boards were able to make binding decisions instead of recommendations, any of the parties not satisfied with them could seek a review by one of the two tribunals. The addition of a second tier with limited jurisdiction over cases submitted to the administrative tribunals would not, in their opinion, really address the problem. One of the difficulties regarding recourse before the International Court of Justice was that the procedure, particularly in its first stages, was tainted with political undertones. This had been the fundamental reason for its eventual discontinuance.

64. Basically, both tribunals had the same jurisprudence. ILOAT, however, appeared to have the edge over UNAT. As soon as UNIDO became a specialized agency it had shifted its recognition from UNAT to ILOAT, which was considered to be the stronger. Only political considerations prevented the merger of both tribunals. Maybe the solution was for UNAT to be eliminated altogether and for the United Nations and other organizations at present recognizing the competence of UNAT, to join ILOAT instead.

FAO/WFP

65. WFP would not support the establishment of a second tier if its only result were to add another layer of recourse on top of the existing ones. The FAO/WFP staff representatives felt that a second tier would give the administration another chance of winning cases lost before the tribunal. As for the merger or unification of tribunals, they felt that the United Nations could join ILOAT if it so wished. This view appeared motivated by the feeling that ILOAT might allow them to challenge International Civil Service Commission (ICSC) decisions before it, whereas UNAT would not. In this context, they mentioned ILOAT judgement 1713.

WHO

66. WHO officials were not fully in favour of establishing a second tier since they believed that the present WHO system, comprising regional boards, the headquarters board and ILOAT, was sufficient and afforded the organization a high rate of success. The addition of another layer of appeal might add to the cost of the administration of justice, particularly if frivolous cases were allowed to reach the higher level. However, ILOAT jurisprudence they often found to be inconsistent or contradictory. As a result, it was difficult to predict the outcome of an appeal. The establishment of a second tier would therefore be positive if it could serve to reconcile ILOAT judgements.

C. SUMMARY INFORMATION ON THE NATIONAL LEGAL SYSTEMS OF SOME MEMBER STATES

67. In order to learn about best practices and provide a basis for comparison with the Member States, as called for in General Assembly resolution 55/258, the Inspectors addressed a questionnaire to 44 Member States, the selection of which was based on the representation of different judicial systems prevailing across the regional groups. The text of the questionnaire and a summary of the responses received (17) appear below. The General Assembly may wish to request, through the Secretary-General, a complement of information on the legal systems of all Member States.

QUESTIONNAIRE ADDRESSED TO SELECTED MEMBER STATES

1. Does an administrative tribunal exist in your country to which disputes on administrative decisions can be brought?

2. Does any higher recourse instance exist in respect of decisions by such a tribunal?

3. If yes, what is the approximate percentage of appeals which go before the higher instance(s)?

4. Are there alternative dispute solutions (such as mediation, arbitration, ombudsman, etc.)?

5. Please provide any additional information you deem to be relevant.

SUMMARY ANSWERS ON NATIONAL LEGAL SYSTEMS PROVIDED BY SOME MEMBER STATES

ALGERIA

1. En matière de contentieux administratifs, les institutions et administrations publiques sont justiciables, selon la nature du contentieux, devant les juridictions administratives (Tribunal administratif).

2. Actuellement, une décision est susceptible de recours devant la Cour Suprême (chambre administrative. Selon la loi 98-01 du 30 mai 1998, le Conseil d'Etat est l'organe régulateur de l'activité des judiciaires et connaît sur appel, des jugements rendus en premier ressort par les juridictions administratives. A titre transitoire, en attendant la mise en place du Conseil d'Etat, la chambre administrative de la Cour Suprême demeure compétente pour les affaires dont elle est saisie.

3. Pas disponible.

4. La tentative de conciliation des deux parties d'un contentieux administratif est obligatoire conformément à l'article 169 ter du code de procédure civile.

BURKINA FASO

1. Des chambres administrative existent auprès de chaque Tribunal de grande instance (TGI), au nombre de onze.

2. Les dernières réformes institutionnelles prévoient la mise en place d'un Conseil d'Etat habilité à connaître du contentieux administratif.

3. Au stade actuel, les Tribunaux de grandes instance censés se prononcer sur le contentieux administrif fonctionnent difficilement compte tenu du nombre des dossiers et de l'insuffisance du nombre de magistrats et du peu de spécialisation.

4. Le Burkina Faso expérimente avec succès depuis quelques années le système de"l'ombudsman suédois" en nommant un médiateur qui a pour mission de rapprocher l'Administration des administrés.

5. Dans chaque Département ministériel il existe des délégués du personnel élu annuellement et qui sont consultés pour toute sanction disciplinaire touchant la carrière d'un agent.

CANADA

1. There are more than 20 administrative tribunals in Canada at the federal level alone, and several dozen more in the provinces.

2. Some have appeal provisions and others not. Decisions of administrative tribunals are subject to judicial review by the Federal Court, in the case of federal administrative tribunals, or a superior court of a province, in the case of provincial administrative tribunals.

3. Not known.

4. Some superior courts have implemented or are contemplating implementing alternative dispute resolution processes.

5. For further information visit homepages of the Public Service Commission of Canada, the Public Service Staff Relations Board and the Canadian Human Rights Commission which are, respectively:

http://www.psc-cfp.gc.ca/recours/recours_e.htm

http://www.pssrb-crtfp.gc.ca

http//www.chrc-ccdp.ca

CZECH REPUBLIC

1. Administrative justice is performed by common courts in the framework of civil proceedings. The Supreme Administrative Court, which, according to the Constitution (December 1992) is a separate body in the court system, has not yet been established. The administrative courts (a) review the legality of legally effective decisions of public administrative authorities upon suits of parties and after exhaustion of all admissible ordinary legal remedies; (b) decide on legal remedies against non-effective decisions of public administrative authorities.

2. As the Supreme Administrative Court is not yet in existence, its role has been assumed by the Constitutional Court.

3. Not available.

4. An ombudsman function is filled by the Public Defender of Rights who works to defend persons in relation to the actions of official bodies and other institutions, should such actions be inconsistent with the law or in contradiction to the principles of a democratic, legal state and good administration, and also in the event of inaction by these offices. The Defender is elected by Parliament for a term of six years and cannot be a member of a political party.

5. Substantial reform of administrative justice is being prepared, particularly by the establishment of the Supreme Administrative Court.

FIJI

1. There is no national administrative tribunal forming part of the national judicial system. Existing mechanisms, including disciplinary tribunals, are specific to each sector.

2. The High Court exercises appellate and supervisory jurisdiction in respect of tribunals and other persons or bodies who have quasi-judicial or executive functions.

3. Not applicable.

4. Office of the Ombudsman (Laws of Fiji, Chapter 3) and Office of the Permanent Arbitrator for industrial disputes (*Arbitration Act*, Laws of Fiji, Chapter 38 and *Employment Act*, Laws of Fiji, Chapter 92).

5. No mediation facility or mechanism is formalized in the court system. The Beattie Report of 1994 made recommendations for reform in the courts of Fiji which may provide some leeway for the establishment of an administrative tribunal.

FRANCE

1. Les tribunaux administratifs sont en premier ressort juges de droit commun du contentieux administratif.

2. La loi du 31 décembre 1987 portant réforme du contentieux a crée des cours administratives d'appel compétentes pour statuer sur les recours formés contre les jugements des tribunaux administratifs, à l'exception notamment des recours pour excès de pouvoir formés contre les actes réglementaires. De son coté, le Conseil d'Etat est juge de cassation des arrêts des cours administrives d'appel.

3. Pourcentage de jugements de tribunal administratif frappés d'appel en 2000 : 15.3%

Pourcentage d'arrêts de cour administrative d'appel frappés d'un pourvoi de cassation en 2000: 11.4%.

4. Transactions, médiations, conciliations et arbitrages constitutent en droit français des modes alternatifs de règlement amiable des litiges en matière administrative.

5. L'efficacité de la justice administrative connaît depuis quelques années un renforcement notable. La loi du 30 juin 2000 sur le référé administratif participe à cette évolution au même titre que la loi du 12 avril 2000 relative aux droits des citoyens dans leurs relations avec les administrations.

GERMANY

1. and 2. The administration of justice in the Federal Republic of Germany is divided among three instances. The administrative courts constitute the first instance, the Higher Administrative Courts the second instance, and the Federal Administrative Court the highest instance. Decisions made by the lower instances may be submitted to the higher instances for review.

3. With respect to matters settled by administrative courts by judgement, the percentage of appeals in Germany is some 50 per cent. If, however, the number of appeals is set in relation to the number of cases dealt with by first instance administrative courts, the percentage is only 15 per cent. Out of the cases dealt with by Higher Administrative Courts, some 10 per cent are referred to the Federal Administrative Court.

4. German administrative procedure law does not provide for formalized alternative settlement procedures of administrative disputes such as mediation, arbitration or an ombudsman, although mediation may take place in informal areas of

administrative action.. This is mainly due to the fact that authorities regularly conduct comprehensive hearings in order to plumb the interests of the parties concerned, and then reach an administrative decision on the basis thereof. In the Länder, additional alternative options are in place for the settlement of administrative disputes, including an ombudsman.

ITALY

1. In Italy, the administrative justice system is based upon a double jurisdiction: the ordinary judicial authority (Tribunals, Appeal Courts) and the administrative judicial authority (Regional Administrative Tribunals and the State Council (Rome) or Administrative Justice Council (Sicily region)). In addition, there are some special administrative bodies whose competencies are established by law (e.g. State Audit Court, Tribunal for Public Waters, Tax Commissions, etc.).

2. A decision taken by Regional Administrative Tribunals can be submitted to the State Council/ Administrative Justice Council for a second instance appeal.

3. During the period 1982-2001, the percentage of appeals to the State Council was approximately 11%.

4. Possible alternative solutions to jurisdictional appeals are the preventive settlement of potential disputes through conciliation and transaction, the most common tool of which is arbitration. There is also the institution of the ombudsman, which was reshaped by Law 127 of 1997.

5. The recently enacted Law 205 of July 21, 2000, sets new administrative justice provisions aimed at simplifying and streamlining administrative procedures.

JAPAN

1. No administrative tribunal exists as a special court under the authority of the administrative body. A special law exists regarding disputes over administrative decisions.

2. An appeal to a judicial court after judgement by the administrative body is presumed essential. The Japanese constitution prohibits final judgement by the administrative body.

3. Not available, as data are compiled by various agencies.

4. Alternative dispute solutions include mediation and arbitration.

LUXEMBOURG

1. Le Tribunal administratif luxembourgeois institué par la loi du 7 novembre 1996 statue sure les recours dirigés pour incompétence, excès et détournement de pouvoir, violation de la loi ou des formes destinées à protéger les intérêts privés, contretoutes les décisions administratives à caractère individuel ou réglementaire pour lesquelles aucun autre recours n'est prévu.

2. Sauf disposition contraire de la loi, l'appel peut être interjeté devant la Cour administrative. Dans certains cas prévus par la loi. la Cour juge en premier et dernier ressort.

3. Approximativement 23% des affaires vont en appel.

4. Il y a théoriquement la possibilité de résoudre ces différends à l'amiable sure décision du juge. Dans la pratique c'est rarement le cas, cette catégorie de différends étant traitée par procédure écrite.

5. Seuls le ou les destinataires d'une décision administrative individuelle peuvent intenter en principe un recours contre une décision.

MEXICO

1. Federal Tribunal of Administrative and Fiscal Justice, Administrative Tribunal (local level) and the High Agrarian Court. Federal Tribunal of Conciliation and Arbitration for labour conflict.

2. Recourse against first instance decisions of almost all administrative tribunals is foreseen within the laws governing each tribunal. Beyond this, recourse may be made to the "*Tribunales Colegiados de Circuito del Poder Judicial de Federación*", except those which fall under the "*Ley de Amparo*" (pardon). Decisions of the Supreme Court are binding in matters of labour law, as are those of the Federal Judicial Council in other cases.

3. Not available.

4. No alternative dispute resolution mechanisms exist.

NETHERLANDS

1. An administrative tribunal does exist.

2. There are three appeal tribunals (depending on the subject matter).

3. Approximately 8% of cases go to appeal.

4. Alternative dispute solutions also exist.

5. The Netherlands have a General Administrative Law Act which is being introduced in stages. The present appeal system consists of a compulsory objection to the administrative authority that made the order, which then has to reconsider the case and make a new order. Any new information has to be taken into account (*ex nunc* decision). If the submittant is not satisfied with the new order he can bring the case to court. All general courts in the Netherlands have a special chamber for administrative decisions. Individuals can also bring forward cases where the government authority has failed to make an order in due time.

ROMANIA

1. According to Law no. 29/1990, administrative contentious matters may be brought before the county regional court or the regional court of Bucharest within the territorial area where the plaintiff has his or her domicile.

2. A decision made under para. 1 may be appealed against at the competent Appeal Court. The decision of the Appeal Court may be taken to the Supreme Court of Justice within 15 days from notification.

3. Not available.

4. No formal mediation or conciliation procedures exist.

SOUTH AFRICA

1. The Constitution of South Africa provides that everyone has the right to administrative action that is lawful, reasonable and procedurally fair. National legislation must provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal. The Promotion of Administrative Justice Act, 2000 was enacted in compliance with the requirements of the Constitution.

2. Pending promulgation of the rules of procedure for review under the Promotion of Administrative Justice Act, proceedings for judicial review must be instituted in a High Court or the Constitutional Court.

3. Not available.

4. The Arbitration Act, 1965 provides for the procedure for the settlement of disputes by arbitration. The Labour Relations Act, 1995 provides simple procedures for the resolution of labour disputes through statutory conciliation, mediation and arbitration (Commission for Conciliation, Mediation and Arbitration) and through independent alternative dispute resolution services. It further establishes the Labour Court and the Labour Appeal Court as High Courts.

5. Before bringing an administrative action before a court, the affected person must comply with the rule of "exhaustion of internal remedies" in the Promotion of Administrative Justice Act. This means that where the law sets out procedures allowing someone to review or appeal a decision of the administration, these must be used up before that person can approach a court. A person can therefore only ask for judicial review as a last resort.

SWITZERLAND

1. Les décisions administratives des autorités, tant sur le plan cantonal que fédéral, peuvent être soumises à un tribunal de dernière instance.

2. Les jugements des tribunaux adminitratifs cantonaux peuvent être en principe portés au Tribunal fédéral, aussi longtemps qu'ils sont prononcés (ou auraient dû l'être) en se fondant sur le droit public fédéral. Pour le reste, les tribunaux cantonaux décident comme dernière instance. Le Tribunal fédéral juge de son côté en ultime instance. Actuellement, l'organisation judiciaire fédérale est en révision totale. Un des objectifs est la création d'un nouveau tribunal administratif fédéral comme instance préalable au Tribunal fédéral. Avec la réalisation de cette réforme, une double instance de recours sera à disposition sur le plan fédéral pour les différends administratifs.

3. Les pourcentages des jugements portés auprès du Tribunal fédéral n'existent pas. Cependant, on

peut estimer qu'un recours se produit dans 10 à 20% des cas.

4. Il n'y a actuellement en Suisse aucun mécansime institutionnalisé de résolution à l'amiable des conflits administratifs. Certaines communes et certains cantons connaissent cependant l'institution de l'ombudsman.

5. La constitution fédérale comprend une garantie de l'accès au juge, qui accorde aux citoyennes et aux citoyens un droit fondamental à ce que leurs causes (y compris les différends administratifs) puissent être jugées par un tribunal indépendant.

SYRIAN ARAB REPUBLIC

1. There are two stages of administrative jurisdiction where recourse against administrative decisions can be brought by individuals disputing the legality of such decisions.

2. The State Council is the higher instance for recourse.

3. Approximately 30% of cases go before the higher instance.

4. There are no alternative dispute solutions.

5. The Administrative Tribunal has the right to decide on whether an employee may be maintained in his/her post pending the final outcome of the case.

UNITED STATES OF AMERICA

1. Several forums exist for federal government employees to raise disputes regarding their employment, including the Merit Systems Protection Board (www.mspb.gov) which has broad jurisdiction over disputes arising from civil service personnel actions (e.g. terminations, demotion or suspensions longer than 14 days); the Office of Special Counsel (www.osc.gov) which investigates alleged prohibited personnel practices, such as reprisals for "whistleblowing", and enforces legislation regarding the political activities of employees; the Equal Employment Opportunity Commission (www.eeoc.gov) which has jurisdiction over claims of discrimination; and the Federal Labor Relations Authority (www.flra.gov) that adjudicates complaints of unfair labour practices.

2. Appeals may be pursued as follows:

MSPB: to Federal Court of Appeals and the Supreme Court

OSC: to Federal Court of Appeals

EEOC: through *de novo* trial in federal district court, then Federal Court of Appeals and ultimately the Supreme Court

FLRA: Federal Court of Appeals

3. A "fair number" of cases proceed to an appeal authority. More details are available from web-sites mentioned above and on the sites of the Federal Court of Appeals (www.fedcir.gov) and the Supreme Court (www.supremecourtus.gov).

4. Alternative dispute resolution mechanisms (primarily mediation) are available in most of the above instances, if the parties agree to them, and are also offered at the court level.

68. The replies received by the Inspectors clearly demonstrate that in most countries a higher recourse instance exists for appeal against decisions of administrative tribunals. It may be further noted that the remaining Member States envisage the creation of such a jurisdiction. Almost all recognize the importance of negotiation and mediation before litigation. In this respect, the Inspectors welcome the creation of the post of Ombudsman in the United Nations Secretariat, as recommended in their previous report (A/55/57). The institutionalization of this full-time, highly professional function will, it is hoped, contribute to a healthier administration of justice which, until now, has suffered from too many deficiencies. Taking into account that the United Nations Administrative Tribunal alone has passed more than 1,000 judgements, there is certainly justification for strengthening the process of administering justice within the organizations of the United Nations system.

ANNEX A

List of international organizations recognizing the jurisdiction of the International Labour Organization Administrative Tribunal (ILOAT)

- International Labour Organization (ILO), including the International Training Centre (ITCILO)
- World Health Organization (WHO), including the Pan American Health Organization (PAHO)
- United Nations Educational, Scientific and Cultural Organization (UNESCO)
- International Telecommunication Union (ITU)
- World Meteorological Organization (WMO)
- Food and Agriculture Organization of the United Nations (FAO)
- European Organization for Nuclear Research (CERN)
- World Trade Organization (WTO)
- International Atomic Energy Agency (IAEA)
- World Intellectual Property Organization (WIPO)
- European Organization for the Safety of Air Navigation (Eurocontrol)
- Universal Postal Union (UPU)
- European Southern Observatory (ESO)
- Intergovernmental Council of Copper Exporting Countries (CIPEC)
- European Free Trade Association (EFTA)
- Inter-Parliamentary Union (IPU)
- European Molecular Biology Laboratory (EMBL)
- World Tourism Organization (WTO)
- European Patent Organization (EPO)
- African Training and Research Centre in Administration for Development (CAFRAD)
- Intergovernmental Organization for International Carriage by Rail (OTIF)
- International Center for the Registration of Serials (CIEPS)
- International Office of Epizootics (OIE)
- United Nations Industrial Development Organization (UNIDO)
- International Criminal Police Organization (Interpol)
- International Fund for Agricultural Development (IFAD)
- International Union for the Protection of New Varieties of Plants (UPOV)
- Customs Co-operation Council (CCC)
- Court of Justice of the European Free Trade Association (EFTA Court)
- Surveillance Authority of the European Free Trade Association (ESA)
- International Service for National Agricultural Research (ISNAR)
- International Organization for Migration (IOM)
- International Centre for Genetic Engineering and Biotechnology (ICGEB)
- Organization for the Prohibition of Chemical Weapons (OPCW)
- International Hydrographic Organization (IHO)
- Energy Charter Conference (ECC)
- International Federation of Red Cross and Red Crescent Societies
- Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO PrepCom)
- European and Mediterranean Plant Protection Organization (EPPO)
- International Plant Genetic Resources Institute (IPGRI)

ANNEX B

List of organizations recognizing the jurisdiction of the United Nations Administrative Tribunal (UNAT)

- United Nations including:

- United Nations Development Programme (UNDP)
- Office of the United Nations High Commissioner for Refugees (UNHCR)
- United Nations Children's Fund (UNICEF)
- United Nations Population Fund (UNFPA)
- International Court of Justice (ICJ)

- International Maritime Organization (IMO)
- International Civil Aviation Organization (ICAO)